Amy L. Bennecoff (275805) Kimmel & Silverman, P.C. 30 East Butler Pike Ambler, PA 19002 Telephone: 215-540-8888 Facsimile: 215-540-8817 abennecoff@creditlaw.com Attorney for Plaintiff

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### UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No.: ATIKE KING, **SACV 14 - 00150 AG (RNBx)** COMPLAINT FOR DAMAGES Plaintiff, ) 1. VIOLATION OF THE FAIR V. DEBT COLLECTION PRACTICES ) ACT, 15 U.S.C. §1692 ET. SEQ.; GRANT & WEBER, PC. ) 2. VIOLATION OF THE ) TELEPHONE CONSUMER Defendant. ) PROTECTION ACT, 47 U.S.C. ) §227 ET. SEO. ) 3. VIOLATION OF THE ) ROSENTHAL FAIR DEBT ) COLLECTION PRACTICES ACT, ) CAL. CIV. CODE §1788 ET. SEQ. JURY TRIAL DEMANDED

#### **COMPLAINT**

ATIKE KING ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against GRANT & WEBER, PC ("Defendant"):

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#### INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA"), the Telephone Consumer Protection Act, 47 U.S.C. §227 et seq. ("TCPA,") and the Rosenthal Fair Debt Collection Practices Act, cal. Civ. Code §1788, et. seq. ("RFDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

#### JURISDICTION AND VENUE

- 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.
- 3. Defendant conducts business in the State of California and therefore, personal jurisdiction is established.
  - 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2).

#### **PARTIES**

- 5. Plaintiff is a natural person residing in Huntington Beach, California.
- 6. Plaintiff is a "consumer" as that term is defined by 15 U.S.C.

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§1692a(3) and is a "debtor" as defined by Cal. Civ. Code §1788.2(h).

- Defendant is a corporation specializing in debt collection with its 7. principal place of business located at 6575 Agoura Rd, Calabasas, California 91302.
- Defendant is a "debt collector" as that term is defined by 15 U.S.C. 8. §1692a(6), and RFDCPA, Cal. Civ. Code §1788.2(c).
- 9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

### **FACTUAL ALLEGATIONS**

- At all relevant times, Defendant was attempting to collect an alleged 10. consumer debt from Plaintiff as the term is defined by the FDCPA at 15 U.S.C. § 1692a(5) and the RFDCPA at Cal. Civ. Code §1788.2(f).
- The alleged debt originated from a medical bill, and arose out of 11. transactions which were primarily for personal, family, or household purposes.
- Beginning in January or February 2013, and continuing through 12. March 2013, Defendant's representatives placed repeated harassing debt collection calls to Plaintiff's cellular telephone.
  - Defendant's harassing debt collection calls derived from numbers 13.

(818) 871-7722 and (888) 999-7166. The undersigned has confirmed that these numbers belong to Defendant.

- 14. Defendant regularly called Plaintiff, even after Plaintiff indicated she was disputing the alleged debt.
- 15. Once told that the debt was disputed, there was no purpose for subsequent calls by Defendant except for the purposes of harassment.
- 16. Defendant also contacted Plaintiff's ex-husband and informed him of the alleged debt.
- 17. Upon information and belief, many calls were placed to Plaintiff's cellular phone by a computer autodialer, and with use of a pre-recorded or artificial voice.
- 18. Defendant's telephone calls were not for "emergency purposes," as that terms is referenced in 47 U.S.C. §227(b)(1)(A).
- 19. Finally, on February 21, 2013, Defendant sent a writing to Plaintiff regarding the alleged debt. The writing failed to sufficiently set forth her rights pursuant to the FDCPA.
- 20. Further, the writing included attempts to collect additional amounts, including interest.
- 21. Defendant's actions as described herein were made with the intent to harass, deceive and coerce payment from Plaintiff.

# COUNT I DEFENDANT VIOLATED § 1692c(b) OF THE FAIR DEBT COLLECTION PRACTICES ACT

- 22. Section 1692c(b) of the FDCPA prohibits debt collectors from communicating, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.
- 23. Defendant violated § 1692c(b) of the FDCPA when it communicated with Plaintiff's ex-husband regarding Plaintiff's alleged debt.

# COUNT II DEFENDANT VIOLATED § 1692d OF THE FAIR DEBT COLLECTION PRACTICES ACT

- 24. Section 1692d of the FDCPA prohibits debt collectors from engaging in any conduct the natural consequence of which is to harass, oppress or abuse any person, in connection with the collection of a debt.
- 25. Defendant violated § 1692d of the FDCPA when it called Plaintiff repeatedly and continuously, when it continued to call Plaintiff even after she informed Defendant that she disputed the alleged debt and when it engaged in other harassing or abusive conduct.

# COUNT III DEFENDANT VIOLATED § 1692d(5) OF THE FAIR DEBT COLLECTION PRACTICES ACT

- 26. Section 1692d(5) of the FDCPA prohibits debt collectors from causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number..
- 27. Defendant violated § 1692d(5) of the FDCPA when it caused Plaintiff's telephone to ring repeatedly and continuously with the intent to harass or annoy Plaintiff.

# COUNT IV DEFENDANT VIOLATED §§ 1692e, 1692e(2)(A), and 1692e(10) OF THE FAIR DEBT COLLECTION PRACTICES ACT

- 28. Section 1692e of the FDCPA prohibits debt collectors from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.
- 29. Section 1692e(2)(A) of the FDCPA prohibits debt collectors from falsely representing the character, amount or legal status of any debt.
- 30. Section 1692e(10) of the FDCPA prohibits debt collectors from using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

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Defendant violated §§ 1692e, 1692e(2)(A) and 1692e(10) of the 31. FDCPA when it represented that it could collect interest that was not agreed to and when it made other deceptive, false and misleading representations.

#### **COUNT V DEFENDANT VIOLATED § 1692f OF THE** FAIR DEBT COLLECTION PRACTICES ACT

- Section 1692f of the FDCPA prohibits debt collectors from using 32. unfair or unconscionable means to collect a debt.
- 33. Defendant violated § 1692f of the FDCPA when it called Plaintiff repeatedly and continuously, when it continued to call Plaintiff even after she informed the Defendant she disputed the debt, when it failed to provide Plaintiff with written information sufficiently setting forth her rights pursuant to the FDCPA, attempted to collect additional charges, including interest, and when it engaged in other unfair conduct.

#### **COUNT VI DEFENDANT VIOLATED § 1692f(1) OF THE** FAIR DEBT COLLECTION PRACTICES ACT

Section 1692f(1) of the FDCPA prohibits debt collectors from 34. collecting any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the

agreement creating the debt or permitted by law.

35. Defendant violated § 1692f(1) of the FDCPA when it attempted to collect additional charges, including interest.

### COUNT VII DEFENDANT VIOLATED § 1692g(a) OF THE FAIR DEBT COLLECTION PRACTICES ACT

- 36. Section 1692g(a) of the FDCPA states that within five days after the initial communication with a consumer in connection with the collection of a debt, a debt collector shall send the consumer a written notice containing the amount of the debt, the name of the creditor to whom the debt is owed, the manner in which to dispute the debt, and that if the debt is disputed, that the debt collector will obtain verification of the debt, and will provide information to Plaintiff on how to dispute the debt.
- 37. Defendant violated § 1692g(a) of the FDCPA when it failed to provide written notification or any information in writing to Plaintiff in regards to how to dispute the debt or obtain verification of the debt, in violation of the FDCPA.

## COUNT VIII DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

- 38. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a person or entity to bring in an appropriate court of that state "an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation."
- 39. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person or entity to bring in an appropriate court of that state "an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater."
- 40. Defendant repeatedly placed non-emergency calls to Plaintiff without Plaintiff's consent.
- 41. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.
- 42. Here, Defendant repeatedly and regularly placed non-emergency, automated calls to Plaintiff using a pre-recorded or artificial voice.
- 43. Defendant did not have Plaintiff's express consent prior to contacting her using an automatic telephone dialing system or pre-recorded or artificial voice.

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Defendant's conduct violated §227(b)(1)(A)(iii) of the TCPA by 44. making any call using any automatic telephone dialing system or an artificial prerecorded voice to a telephone number assigned to a cellular telephone service.

### **COUNT IX** DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

- Section 1788.17 of the California Civil Code mandates that every debt 45. collector attempting to collect a consumer debt shall comply with § 1692b through § 1692j of the FDCPA.
- Defendant violated Cal. Civ. Code § 1788.17, when it violated the 46. FDCPA for the reasons set forth in this Complaint.

WHEREFORE, Plaintiff, ATIKE KING, respectfully prays for a judgment as follows:

- Actual Damages;
- Statutory damages;
- Reasonable attorney's fees and costs;
- d. Any other relief deemed appropriate by this Honorable Court.

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DATED: 1/29/2014

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### **DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, ATIKE KING, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

KIMMEL & STEVERMAN, P.C..

By:

Amy L. Benneroff (275805) Kimmel & Silverman, P.C

30 East Butler Pike Ambler, PA 19002

Telephone: (215) 540-8888 Facsimile (215) 540-8817

Email: abennecoff@creditlaw.com

Attorney for Plaintiff

Case 8:14-cyrop150-AG18NBsTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET I (a) PLAINTIFFS (Check box if you are representing yourself  $\Box$ ) DEFENDANTS ATIKE KING GRANT & WEBER, P.C. (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing Attorneys (If Known) yourself, provide same.) AMY L. BENNECOFF, ESQ., KIMMEL & SILVERMAN, P.C. 30 East Butler Avenue, Ambler, PA 19003 (215)540-8888; abennecoff@creditlaw.com II. BASIS OF JURISDICTION (Place an X in one box only.) III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) □ 1 U.S. Government Plaintiff ■ 3 Federal Question (U.S. PTF DEF PTF DEF Government Not a Party) Citizen of This State  $\Box$ 1 Incorporated or Principal Place  $\Box 4$  $\Box 4$ of Business in this State ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship Citizen of Another State  $\square$  2 Incorporated and Principal Place 

5  $\square$  2 □ 5 of Parties in Item III) of Business in Another State Citizen or Subject of a Foreign Country 3  $\square 3$ Foreign Nation □ 6  $\Box 6$ IV. ORIGIN (Place an X in one box only.) ▼1 Original □ 2 Removed from □ 3 Remanded from □ 4 Reinstated or □ 5 Transferred from another district (specify): □ 6 Multi-☐ 7 Appeal to District Proceeding State Court Appellate Court Reopened District Judge from Litigation Magistrate Judge V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes \( \text{No (Check 'Yes' only if demanded in complaint.)} \) CLASS ACTION under F.R.C.P. 23: ☐ Yes No ☐ MONEY DEMANDED IN COMPLAINT: \$ VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 15 U.S.C. 1692k VII. NATURE OF SUIT (Place an X in one box only.) **OTHER STATUTES** CONTRACT TORTS TORTS **PRISONER** LABOR ☐ 400 State Reapportionment □ 110 Insurance PERSONAL INJURY PERSONAL **PETITIONS** □ 710 Fair Labor Standards □ 410 Antitrust □ 120 Marine □ 310 Airplane **PROPERTY** □ 510 Motions to Act ☐ 430 Banks and Banking ☐ 130 Miller Act □ 315 Airplane Product ☐ 370 Other Fraud Vacate Sentence □ 720 Labor/Mgmt. □ 450 Commerce/ICC □ 140 Negotiable Instrument Liability ☐ 371 Truth in Lending Habeas Corpus Relations □ 320 □ 150 Recovery of Rates/etc. Assault, Libel & ☐ 380 Other Personal □ 530 General □ 730 Labor/Mgmt. ☐ 460 Deportation Slander Overpayment & Property Damage ☐ 535 Death Penalty Reporting &  $\square$  330 ☐ 470 Racketeer Influenced Fed. Employers' Enforcement of ☐ 385 Property Damage ☐ 540 Mandamus/ Disclosure Act Liability and Corrupt Judgment Product Liability Other □ 740 Railway Labor Act □ 340 Marine Organizations ☐ 151 Medicare Act BANKRUPTCY □ 550 Civil Rights ☐ 790 Other Labor ¥480 Consumer Credit □ 345 Marine Product □ 152 Recovery of Defaulted ☐ 422 Appeal 28 USC ☐ 555 Prison Condition Litigation Liability ☐ 490 Cable/Sat TV Student Loan (Excl. 158 FORFEITURE / □ 791 Empl. Ret. Inc. □ 350 Motor Vehicle □ 810 Selective Service Veterans) □ 423 Withdrawal 28 PENALTY □ 355 Motor Vehicle Security Act □ 850 Securities/Commodities/ ☐ 153 Recovery of **USC 157** ☐ 610 Agriculture PROPERTY RIGHTS Product Liability Exchange Overpayment of CIVIL RIGHTS □ 360 □ 620 Other Food & □ 820 Copyrights Other Personal □ 875 Customer Challenge 12 Veteran's Benefits □ 441 Voting Injury Drug □ 830 Patent USC 3410 □ 160 Stockholders' Suits ☐ 442 Employment ☐ 625 Drug Related Personal Injury-☐ 840 Trademark □ 890 Other Statutory Actions ☐ 190 Other Contract ☐ 443 Housing/Acco-Med Malpractice Seizure of SOCIAL SECURITY □ 891 Agricultural Act □ 195 Contract Product mmodations Personal Injury-Property 21 USC □ 861 HIA (1395ff) □ 892 Economic Stabilization Liability □ 444 Welfare □ 862 Black Lung (923) Product Liability 881 Act ☐ 196 Franchise Asbestos Personal ☐ 445 American with ☐ 630 Liquor Laws □ 863 DIWC/DIWW □ 893 Environmental Matters REAL PROPERTY Injury Product Disabilities -☐ 640 R.R. & Truck (405(g))□ 894 Energy Allocation Act □ 210 Land Condemnation Liability Employment ☐ 650 Airline Regs □ 864 SSID Title XVI □ 895 Freedom of Info. Act ☐ 220 Foreclosure **IMMIGRATION** American with □ 660 Occupational □ 865 RSI (405(g)) ☐ 462 Naturalization □ 900 Appeal of Fee Determi-□ 230 Rent Lease & Ejectment Disabilities -Safety /Health FEDERAL TAX SUITS nation Under Equal ☐ 240 Torts to Land Application Other □ 690 Other ☐ 870 Taxes (U.S. Plaintiff

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_SACV 14 - 00150 AG (RNBx)

□ 245 Tort Product Liability

☐ 290 All Other Real Property

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

☐ 440 Other Civil

Rights

□ 463

□ 465

Habeas Corpus-

Alien Detainee

Actions

Other Immigration

CV-71 (05/08)

Access to Justice

□ 950 Constitutionality of

State Statutes

or Defendant)

USC 7609

IRS-Third Party 26

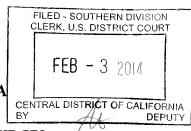
□ 871

## Case 8:14-cy-00150-AG-RNB Document 1 Filed 02/03/14 Page 13 of 14 Page ID #:17 UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Ha If yes, list case number(s):	s this action been p	reviously filed in this court an	ad dismissed, remanded or closed? ▼No □ Yes						
VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? VNo Yes If yes, list case number(s):									
□ C. □ D.	Arise from the sam Call for determinat For other reasons w Involve the same p	e or closely related transaction ion of the same or substantiall yould entail substantial duplica atent, trademark or copyright,	ly related or similar questions of law and fact; or ation of labor if heard by different judges; or and one of the factors identified above in a, b or c also is present.						
<ul> <li>IX. VENUE: (When completing the</li> <li>(a) List the County in this District;</li> <li>☐ Check here if the government it</li> </ul>	California County of	outside of this District; State if	f necessary.)  f other than California; or Foreign Country, in which EACH named plaintiff resides. this box is checked, go to item (b).						
County in this District:*	is agencies of empio	syees is a named plaintiff. If t	California County outside of this District; State, if other than California; or Foreign Country						
Orange County			James and the state of the stat						
(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).									
County in this District:*			California County outside of this District; State, if other than California; or Foreign Country						
			Los Angeles, CA						
(c) List the County in this District; Note: In land condemnation ca	California County cases, use the location	outside of this District; State if	f other than California; or Foreign Country, in which <b>EACH</b> claim arose.						
County in this District:*			California County outside of this District; State, if other than California; or Foreign Country						
Orange County									
* Los Angeles, Orange, San Bernar Note: In land condemnation cases, us	dino, Riverside, V e the location of the	entura, Santa Barbara, or S	an Luis Obispo Counties						
X. SIGNATURE OF ATTORNEY (	OR PRO PER):		Date 1/29/2014						
or other papers as required by law	v. This form, approv	ved by the Judicial Conference	mation contained herein neither replace nor supplement the filing and service of pleadings of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed ing the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)						
Key to Statistical codes relating to So	cial Security Cases:	189							
Nature of Suit Code	Abbreviation	Substantive Statement of	Cause of Action						
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))							
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)							
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))							
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))							
864	SSID	All claims for supplemental Act, as amended.	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.						
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))							

CV-71 (05/08)

### UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA



#### NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

	This case has been a	ssigned to District I	udge Ai	ndrew J. Guilford	and the assigned			
This case has been assigned to District Judge  Magistrate Judge is Robert N. Block								
	The case n	umber on all docum	ents filed with the C	Court should read as	follows:			
SACV 14-00150 AG (RNBx)								
Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.								
All discovery related motions should be noticed on the calendar of the Magistrate Judge.								
	February 3, 2014 Date	Clerk, U. S. District Court  By D. Vo Deputy Clerk  Deputy Clerk						
		NO	TICE TO COUNSI	EL				
A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).								
Subsequent documents must be filed at the following location:								
	Western Division 312 N. Spring Street, Los Angeles, CA 900	G-8 411 W	ern Division Vest Fourth St., Ste 10 Ana, CA 92701		Division elfth Street, Room 134 e, CA 92501			
Failure to file at the proper location will result in your documents being returned to you.								